REMARKS

Claims 1 to 21 are pending. It is stated in the Office Action that the claims are directed to patentably distinct species of five groups: the disease group, the neuroprotective group, the additional agent group, the thrombolytic agent group and the anti-platelet group. Although the species election is traversed for the reasons set forth below, Applicant provisionally elects the species set forth by the Examiner as:

"a. stroke" of the disease group;
"l. NMDA receptor antagonist" of the neuroprotective group;
"n. anticoagulantagent" of the additional agent group;
"t. streptokinase" of the thrombolytic agent group; and
"z. any inhibitor of platelet glycoprotein IIb-IIIa" of the anti-platelet group.

The requirement for a species election is traversed because, while the species set forth as the disease group, the neuroprotective group, the additional agent group, the thrombolytic agent group and the anti-platelet group by the Examiner are independent and patentably distinct, the claimed subject matter in each group is related by a "commonality of operation, function and effect" (see MPEP § 806.04(e)). Additionally, MPEP § 803 states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." It is respectfully submitted that a search of the diseases of claim 1, the neuroprotective agents of claim 8, the additional agents of claim 16, the thrombolytic agents of claim 17 and the anti-platelets of claim 18 would not place an undue burden on the Examiner.

More specifically, for example, in claim 18, Applicants invention is based, in part, on the discovery that administration of an anti-platelet agent in addition to administration of an effective amount of APC, may provide neuroprotection to a subject with a neuropathological disorder, may reduce neurological inflammation in a subject with a neuropathological disorder or may reduce inflammation in a subject with inflammatory vascular disease. As such, various anti-platelet agents are claimed. Therefore, it would not be an undue burden on the Examiner to search all members of the anti-platelet group, as it is well-known that aspirin, dipyridimole,

ticlopidine, clopidogrel, abciximab and other inhibitors of platelet glycoprotein IIb-IIIa all function as anti-platelet agents. It is noted that a search on www.google.com using the key words "antiplatelet, aspirin, dipryidamole" resulted in over 2,000 hits. Specifically, one page near the top of the hit list http://neuroland.com/cvd/antiplate.htm contains all of the agents of claim 18 and characteristics of each. As such, it is submitted that the requirement to elect a species is improper and should be withdrawn pursuant to MPEP § 806.04(e) because each of the "species" of the anti-platelet group is related in that it is a type of anti-platelet agent and because the methods to be practiced are substantially identical with respect to each of the species. Similarly, a search of all species set forth in each of the disease group, the neuroprotective group, the additional agent group, and the thrombolytic agent group would not also place an undue burden on the Examiner. Accordingly, it is respectfully requested that the species set forth as the disease group, the neuroprotective group, the additional agent group, the thrombolytic agent group and the anti-platelet group be rejoined within each group for examination or, alternatively, that an additional explanation in support of the request for an election be provided.

Additionally, the Examiner's identification of the generic claims of the invention is unclear. Applicants believe that the Examiner has incorrectly identified the generic claims. The MPEP § 806.04(d) states that while a generic claim is difficult to define, it should read on each of the species disclosed in the invention, but "should include no material element additional to those recited in the species claims..." It is respectfully submitted that the claims identified in the present Office Action as generic do not meet these requirements.

Throughout the Restriction Requirement, the Examiner has identified claims 2-8 and 10-21 as generic. It is respectfully submitted many of these claims are, in fact, the species claims identified by the present Office Action as requiring election. It is respectfully submitted that claims 1 and 9, which are at no time identified in the Restriction Requirement as generic, are generic. Additionally, claims 5, 7, 13, 15, 16 and 21 are generic. Each of these claims is a claim incorporating all the limitations of the claim(s) dependent therefrom. For example, claim 1 is directed to a method of protecting neuronal cells from cell death from cell death in a subject having or at risk of having a neuropathological disorder, and claim 3 defines various types of

neuropathological disorders. It is respectfully submitted that claim 3 is not generic, but is identified as so in the Restriction Requirement. Similarly, claim 2, which claims no more than intravenous administration of the APC of claim 1 is not generic, but is identified as generic. Accordingly, clarification of the identification of the generic claims of the invention is respectfully requested.

In summary, it is submitted that the species election requirement is improper because the species as set forth are related by a commonality of operation, function and effect. As such, it is respectfully requested that the species election be removed and that all of the claimed subject matter be examined together.

Notwithstanding the above remarks, the species

"a. stroke" of the disease group;
"l. NMDA receptor antagonist" of the neuroprotective group;
"n. anticoagulantagent" of the additional agent group;
"t. streptokinase" of the thrombolytic agent group; and
"z. any inhibitor of platelet glycoprotein IIb-IIIa" of the anti-platelet group

are provisionally elected for examination. The Examiner is invited to contact the undersigned if there are any questions relating to the subject application.

Respectfully submitted,

Date: 6/24/02

Lisa A Haile, Ph.D.
Reg. No. 38,347
Telephone: (858) 677-1456
Facsimile: (858) 677-1465

GRAY CARY WARE & FREIDENRICH LLP
4365 Executive Drive, Suite 1100
San Diego, California 92121-2133

USPTO Customer Number 28213